THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.6692, 11826, 23384, 23404, 23437, 23485, 23486 and 23971 of 2001

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09.11.2005

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Between:

Grampanchayat, Enumamula, represented by its

Person-in-charge, Hanamkonda Mandal, Warangal District.

And others

… Petitioner

AND

1. Government of A.P., rep., by its Secretary, Municipal

Administration and Urban Development Department,

Secretariat, Hyderabad

And others

… Respondents

COMMON ORDER:

The Commissioner of Warangal Municipal Corporation sent proposals to the Government to include nine villages, namely, Gorrekunta, Enumamula, Madikonda, Hammapur, Palavelupula, Kadipikonda, Gundla Singaram, Bheemaram and Gopalapuram, in the periphery, to include in Warangal Municipal Corporation. He also requested to include the leftover portion of other villages (which were already included in the Corporation in 1979) in the Corporation area. Accordingly, after considering the proposal, the Government of Andhra Pradesh, issued memo No.11089/D2/98-9 M.A. dated 05.7.2000 requesting the District Collector, Warangal to issue show cause notice to affected Gram Panchayats as well as other villages, and denotify Gram Panchayats as per A.P. Panchayats (Declaration of Villages) Rules, 1994 (the Rules, for short). Accordingly the District Collector issued the show cause notice to persons-in-charge of each of the above mentioned Gram Panchayats to show cause as to why the Gram Panchayat should not been included in Warangal Municipal Corporation. The Persons-in-charge of the above named Gram Panchayats except Gundla Singaram, have filed these writ petitions assailing the memo dated 05.7.2000 issued by the Government. In all the writ petitions, Government and Commissioner of Panchayat Raj are arrayed as respondents-1 and 2 respectively. The District Collector, District Panchayat Officer and Municipal

Corporation of Warngal are other respondents.

The affidavit accompanying each of the writ petitions contains similar averments. Therefore it would be suffice to refer to the pleadings in W.P.No.6692 of 2001. The Person-in-charge alleges that the Gram Panchayat never passed any resolution expressing its willingness for merger in the Corporation and that such averment in para 3 of the impugned memo is baseless. It is further averred that the Gram Panchayat passed a resolution vehemently opposing the merger and further resolving to maintain the Gram Panchayat as a separate entity and the same was duly informed to the Government. It is contended that the impugned memo indicates the decision already taken by the Government to merge nine Gram Panchayats in Warangal Corporation and therefore, the show cause notice issued by the District Collector on 29.3.2001 is an empty formality and does not specify the requirement of law. It is also alleged that in all the villages a grama sabha was held in which the proposal to merge Gram Panchayat in Corporation was opposed.

All these writ petitions were admitted on 11.4.2001 and this Court by interim order of even date stayed all further proceedings pursuant to the impugned memo. It is unfortunate that the respondents 1 to 4 or respondent No.5 (Warangal Corporation) have not filed counter affidavit so far. Four villagers of Enumamula filed application to implead them in the writ petition and also filed vacate stay petition. In their counter, they allege that the Gram panchayat, Enumamula has failed to provide amenities. They also allege that these Gram panchayats are abutting Municipal Corporation area and therefore, better facilities would be available to the residents of the villages, if it is merged in the Warangal Municipal Corporation. The Gram panchayats filed the writ petitions when show cause notices are issued without submitting any objections and therefore, the writ petitions are not maintainable especially when there is no violation of any right of the Person-in-charge or Members of the Gram panchayat.

Learned Counsel for the petitioners, Sri I.Aga Reddy, submits that without issuing any prior notice, the Government decided to merge the villages in Corporation and the same is violative of Rule 8 of the Rules. Secondly, he would urge that Government did not take any independent decision and it has taken a decision at the instance of local M.L.A., and therefore, the impugned memo is unsustainable. Thirdly, he would urge that the show cause notice issued is an empty formality, as the Government has already decided and in any view of the matter, the Gram panchayat has not given any unanimous decision for merger and therefore, the impugned memo and consequential show cause notices are unsustainable.

The learned Government Pleader for Municipal Administration, Sri P.Vinod, submits that the impugned memo, which directs the District Collector to issue show cause notice under the Rules is in accordance with the provisions of A.P. Panchayat Raj Act, 1994 (the Act, for short) and the Rules. He further submits that Rule 8 of the Rules has no application when the entire village/Gram panchayat is merged in a Municipality/ Municipal Corporation and that in such a situation Rule 12 of the Rules applies and as contemplated under Rule 12(2) the District Collector already issued show cause notices. He placed reliance on a Division Bench judgment of this Court

i n **K.Nagabhushanam v. Collector, Krishna District**. The learned Standing Counsel for Warangal Municipal Corporation has produced the file before this Court and submits that the proposal to merge all the nine villages was taken up in accordance with the resolutions passed by the Sarpanches of all the villages as well as representations made by number of people in all these villages.

The submission of the learned Counsel for petitioners that no independent decision was taken by the Government but the proposal was mooted only at the instance of local M.L.A., is misconceived. A reading of the impugned memo would show that the Commissioner of Warangal Municipal Corporation has submitted proposals to the Government requesting for inclusion of certain villages in the Corporation. The M.L.A., only sent a reminder to the Government bringing to the notice of the Government about the proposal submitted by the Commissioner. Even otherwise, as a representative of the people, if any M.L.A., makes such request, there is nothing wrong in Government considering such representation and taking a decision thereon.

A perusal of the file produced by Warangal Corporation would show that commencing from June, 1997 number of representations were made by the employees, residents and elected Sarpanches of the villages requesting the Hon'ble Chief Minister to include the villages in Warangal Corporation. Indeed at page 14 of the file, there is a copy of the resolution passed by ten (10) sarpanches of the villages requesting the Government to merge these Gram panchayats in Municipal Corporation for providing better facilities and develop the Corporation into a beautiful urban area. The proposal therefore was pending before the Government at least since 1994 and the Government, while processing the said proposal, requested the District Collector to issue show cause notices to the Gram panchayats. In view of the resolution passed by ten sarpanches on 13.7.1994, this Court finds no merit in the submission that the Gram panchayats never expressed their unanimous decision as contended by the learned Counsel for petitioners.

Section 3 of the Act provides for declaration of any revenue village or hamlet as a village for the purpose of constituting Gram panchayat under Section 4 of the Act. The procedure to be followed is contained in the Rules. When it is proposed to constitute a Municipality or Municipal Corporation for a village or group of villages or part thereof declared as a village under Section 3(1) of the Act, under Rule 12(2) of the Rules the Commissioner is required to give an opportunity of showing cause to the declared Gram panchayat. Rule 12 of the Rules reads as under.

> 12. (1) It shall be competent for the Commissioner to cancel a notification under clause (f) of sub-section (2) of Section 3, in the following circumstances, namely :-
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> i. Where it is proposed to constitute a municipality or a notified area under Section 389-A of the Andhra Pradesh Municipalities Act, 1965, or a Municipal Corporation for a village from group of villages or part thereof declared as village under sub-section (1) of Section 3 of the Act;
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> ii. Where a village declared under sub-section (1) of Section 3 or part

thereof is proposed to be merged in a neighbouring Municipality or Municipal Corporation or a Notified Area constituted under Section 389-A of the Andhra Pradesh Municipalities Act, 1965, and the residuary area is not, in the opinion of the Commissioner, a viable unit for continuing as a Gram Panchayat;

iii. Where the revenue village or part thereof declared as a village under sub-section (1) of Section 3 of the said Act ceases to be a revenue village due to submersion or depopulation and the necessity for a Gram Panchayat ceases;

iv. Where it is found in the actual working that the Gram Panchayat for the village declared under sub-section (1) of Section 3 cannot function efficiently as a viable unit of local self-Government.

(2) The Commissioner shall, before issuing a notification under clause (f) of sub-section (2) of Section 3 of the Act, give to the Gram Panchayat, which will be affected by the issue of such notification an opportunity of showing cause against the proposal to indicate its decision within a period of ten days from the date of receipt of the show cause notice and consider the objections if any, of such Gram Panchayat:

Provided that if no reply to the show cause notice from the Gram Panchayat is received within the period aforesaid, the Commissioner shall pass such orders as deemed fit, to give effect to the proposal.

Rule 12 confers the power on the Commissioner to cancel a notification issued under Section 3(2)(f) of the Act (declaring a village for the purpose of constituting Gram panchayat) in four circumstances namely, (i) when it is proposed to constitute Municipality/Municipal Corporation; (ii) when a village is proposed to be merged in a neighbouring Municipality/Coprporation; (iii) when a villave ceases to be village due to submersion or depopulation; and (iv) when it is found that when a Gram panchayat cannot function efficiently as a viable unit of local self-Government. In all these situations, the Rules require the Commissioner to issue show cause notice to the Gram panchayat. As rightly contended by the learned Government Pleader Rule 8 has no application and it operates in a different situation. Rule 8 of the Rules reads as under.

8) Subject to the provisions contained in the Act and these rules, where a Gram Panchayat passes an unanimous resolution that a local area shall not be excluded from or included in a village, the Commissioner, if satisfied that such resolution is not vitiated by any irregularity, impropriety or illegality shall not, except for special reasons to be recorded in writing, exclude from or include in that village any such area.

The Rule 8 cannot be read in isolation. It has to be read with Rules 4 to 7 of the Rules. When any part of the Gram panchayat is to be excluded for the purpose of constituting a new revenue village as per Rules 4, 6 and 7, the Commissioner is required to give a notice. Where a Gram panchayat passes unanimous resolution

that a local area shall not be excluded or included, the Commissioner shall not exclude the area from Gram panchayat except for special reasons to be recorded in writing. This is however as seen from Rule 8 of the Rules, “subject to the provisions contained in the Act and the Rules” (Declaration of Villages Rules). Therefore, Rule 8 has to be read with Rule 12 when a village declared as such under Section 3(1) of the Rules for the purpose of constituting a Gram panchayat is denotified under Rule 12(1) of the Rules. This view is also supported by the decision of a Division Bench of this Court in **K.Nagabhushanam** (supra). The facts in the said case are similar to the facts herein. After noticing the rule position under A.P. Gram Panchayats (Declaration of Villages) Rules, 1969, which are *in pari materia* with 1994 Rules, this Court laid down as under.

> In the presence of those specific provisions of the Gram Panchayats Act providing for the power of the Commissioner to cancel a notification where that village is proposed to be merged in a neighbouring municipality, it is futile to contend that the Government can still act in exercise of its powers under Sec.3 of the A.P. Municipalities Act in disregard of S.3(2) of the Gram Panchayats Act read with R.12 of the Declaration of Village Rules. The provisions of the Municipalities Act and the Gram Panchayats Act have to be harmoniously read together and we have no hesitation in rejecting the submission made by the learned Advocate General that the provisions of the Municipalities Act have any primacy over the provisions of the A.P. Gram Panchayats Act. The Government can include the local areas within a municipality only after the notificationof the Gram Panchayat under Section 3(1) of the Gram Panchayats Act has been validly cancelled. In fact, the Government in its counter proceeded on the footing that such a cancellation is a necessary formality to be observed before the Gram Panchayat is included within the municipal limits.

In the impugned memo, the Government having noticed that it is necessary to cancel the notification under Section 3(2)(f) of the Act in respect of Gram panchayats which are to be merged in Warangal Corporation requested the District Collector to issue notices to Gram panchayats, the petitioners herein – under Declaration of Village Rules. The procedure followed by the Government thus far is therefore beyond any criticism.

The learned Counsel for petitioners lastly requested that the explanations that may be submitted by the petitioners may be considered by the Government taking all aspects into consideration. There cannot be any doubt in that regard. Accordingly, these writ petitions are disposed of in the following manner. The petitioner gram panchayats are given liberty to submit their explanations to the show cause notices dated 29.3.2001 within a period of two weeks from the date of receipt of a copy of this order. As and when such explanations are submitted, the District Collector shall consider the same and take appropriate action under Rule 12 of A.P. Gram Panchayats (Declaration of Villages) Rules, 1994 and it shall then be the Government to take appropriate decision in the matter.

The writ petitions, with the above observations and directions, are disposed of. There shall be no order as to costs.

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(**V.V.S.RAO,J**)

November 09, 2005.

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